

**Statement of Congressman Christopher H. Smith, Chairman
Subcommittee on Africa, Global Human Rights and International Operations**

**“Hague Convention on International Adoptions: Status and the Framework for
Implementation”
November 14, 2006**

This hearing is being held in November in honor of “National Adoption Month.” Unlike the usual celebrations for this month that focus on the building of a family through adoption or on the child who thrives in a loving, adoptive family, this hearing will focus on the complex issues and challenges facing the United States as we move to ratify *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

Adoption remains one of the most compassionate, humane, courageous and loving options available to a child who has been orphaned or abandoned.

Due to a variety of reasons, including the fact that unwed mothers are increasingly keeping and raising their children and because more than 1.3 million unborn children in the United States are aborted each year—more than 47 million children have been aborted since 1973—the number of domestic children eligible for adoption has declined dramatically, prompting many prospective adoptive parents to look overseas.

Thus, over the last decade, the number of foreign children adopted annually by American citizens has doubled—from 11,340 to 22,739.

In 1993, at the Seventeenth Session of the Hague Conference on Private International law, 66 countries came to agreement on a convention to “ensure that intercountry adoptions are made in the best interest of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children.”

The Convention, which entered into force in 1995 contains 48 articles and seeks to ensure that the child is indeed adoptable, that an intercountry adoption is in the child’s best interests, that prospective adoptive parents are eligible and suited to adopt and that competent, transparent mechanisms, including a central authority are in place in each country.

The Convention and the United States implementing legislation, the “Intercountry Adoption Act of 2000” (IAA), make the child’s best interest the paramount concern of the adoption proceedings. In fact, the first statement in the preamble of the Convention calls for “Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

The Convention also provides safeguards for the birthparents and the prospective adoptive parents. The Convention is very clear that birthparents must not be induced by payment or compensation of any kind. In addition, the birthparents must understand that in giving their consent, they will no longer be the child's legal parents, and that consents to adoption must be freely given. Prospective adoptive parents can count on the fact that the child they want to adopt has not been abducted, sold or trafficked. They can rest assured that the adoption proceedings will be handled in a way that promotes the best interests of the child and, at the same time, respects the dignity of the birthparents and safeguards their own needs to establish a forever family.

The Convention is also clear that prospective adoptive parents must be "eligible and suited" to adopt. Eligibility and suitability are determined by the sending country which makes known its preferences in terms of marital status, certain age requirements, and financial status. The receiving country determines and approves eligibility and suitability through a home study of the prospective adoptive parents based on a comprehensive review of family and medical history, social environment, and reasons for adoption that meet the sending country's requirements.

The United States is the largest receiving country, adopting more children from abroad than all the other countries combined. The number of foreign children adopted annually by American citizens has doubled over the last decade from 11,340 to 22,739. The top four sending countries over the past five years are: China (31,543), Russia (24,931), Guatemala (13,203) and South Korea (8,785). Of the four primary countries sending children to the United States, three have signed the Convention – China, the Russian Federation and Guatemala – while South Korea has not.

Currently, the Convention has entered into force in 69 countries. The Senate approved ratification of the Hague Convention in 2000, and Congress enacted the "International Adoption Act of 2000" (IAA) which is the implementing legislation for the Convention. The focus of this hearing will be an examination of the implementation procedures that are being undertaken by the Department of State and the Department of Homeland Security. The regulatory framework developed by these departments will move us toward ratification in 2007.

I welcome Ms. Catherine Barry from the Department of State as it is State which functions as the "Central Authority" as required by the Convention and the IAA. State has made tremendous progress in publishing the Final Regulations on the accreditation of adoption providers, selecting the Council on Accreditation and the State of Colorado as the "Accrediting Entities," approving the fee schedules the Accrediting Entities will charge the providers, approving the compliance system the Accrediting Entities will use in assessing the adoption agencies' adherence to both the Convention and the IAA. In addition, State announced that by the end of this week, November 17th adoption service providers must submit their transitional applications for accreditation.

State has been hard at work developing a regulatory framework for implementing the IAA and the Convention and should be congratulated.

It is a pleasure to welcome Ms. Lori Scialabba, representing the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security. Under the IAA, USCIS is responsible for approval of the home studies. The home studies must be prepared by accredited agencies and must include: a statement that the prospective adoptive parents completed training and counseling, and a statement of all facts relevant to the eligibility and suitability of the prospective adoption parents to adopt a child under any specific requirement identified by the Central Authority of the child's country of origin. No regulations have yet been issued from DHS dealing with the home study preparation and how it will change under the Convention and the IAA.

The second panel of witnesses consists of the two Accrediting Entities named by the Department of State to accredit adoption agencies or approved persons, oversee that the agencies are in substantial compliance with the Convention and the IAA and approve country specific home studies. We are very interested in the testimonies of Mr. Klarberg from the Council on Accreditation (COA) which is charged with accrediting agencies in 49 states, and that of Ms. Andrews from the State of Colorado, who seems to have a much more manageable job of accrediting agencies only within Colorado. Welcome.

The third panel represents adoption agencies and adoptive parents. Mr. DiFilipo of the Joint Council on International Children's Services and Mr. Atwood of the National Council for Adoption have been following the Hague Convention for many years and can offer a particular perspective on the statutory and regulatory framework. I am particularly interested in hearing about the fee schedule and any concerns that this will increase the cost to prospective adoptive parents. I am also interested in learning if the agencies are concerned that the process will increase the length of time to adopt internationally. Thank you both for testifying today.

Before we start taking testimony, I want to share with you some of my observations and concerns about the process. First, while I believe that every child has a right to grow up in a loving family, I also believe there is no right to adopt. By this I mean that close examination of the social environment, suitability to adopt, and eligibility to adopt are critical to promoting the best interests of the child. In addition, it is very important as the largest receiving country that we respect the rules of the sending country in terms of who can adopt and that we follow up with post-adoption services if that was the initial agreement.

A cursory look at the requirements of the top four sending countries indicates that "Chinese law permits adoptions by heterosexual married couples and single heterosexual persons. Chinese law prohibits a homosexual individual or couples from adopting Chinese children."

The Russian Federation requires that "married couples and single persons may adopt Russian children, but the single person must be at least 16 years older than the prospective adoptive child." Russia also requires four follow-up visits with the family to

complete the official adoption reports. These post-adoption reports are due six, 12, 24 and 36 months following the adoption.

Guatemala requires that “married couples and single persons 25 years or older are eligible to adopt.” And finally, South Korea’s guidelines for adoption are that “the prospective parents must be eligible to adopt under the laws of their home country or state of residence. Single parents are not eligible to adopt, and couples should be married for at least three years, be between the ages of 25 and 44, and not have an age difference between the spouses of more than 15 years.”

I want to be assured by State, DHS and the Accrediting Entities that, as the United States moves toward ratification, aggressive actions will be taken to let sending countries know that the United States will prepare and approve its home studies to satisfy the guidelines that sending countries require. The home study preparer can only fulfill the requirements of the sending country if the home study is completed with the specific country identified and the specific requirements made known. Marital status, social environment, ages of prospective adoptive parents, and willingness to meet post-adoption services are country specific items that must be identified if the United States is going to fulfill its obligations. This is the only way the United States can comply with the requirements of the sending country, the Convention and the IAA.

Sadly, I must note that in the four top sending countries, the United States has serious concerns about baby selling, trafficking, abandonment and fraud. In China, estimates run as high as two million orphaned and abandoned children. Under China’s one-child policy, the cultural preference for boys has produced a black market for baby boys. As a result, baby girls are abandoned, leading to a shortage of females in some regions of the country and a black market for baby girls as well. It is reported that newborns have been sold to orphanages for \$100-\$150 and resold for adoption at the rate of \$3,000 or \$4,000. Since China has ratified the Convention, it is my hope that these problems will be remedied.

Guatemala was recently in the media where concerns have been raised again about a country that has ratified the Convention. Issues have been raised with regard to Guatemala’s ratification of an international treaty that apparently violates Guatemalan law. What concerns me is the fact that the privately-run adoption system uses baby brokers to pay birthmothers for their newborns. This affronts the dignity of the baby, the birthmother and the prospective adoptive parent. This violates the Convention and must not be allowed to stand.

Both the Russian Federation and South Korea require United States adoption agencies to follow up with the child in what is called post-adoption services. These include visits, photos and reports to be sent to the country of origin. Non-compliance issues have been raised by experts who note that some families adopting from Russia and South Korea do not want their families to be disrupted by sending these reports to the countries of origin. Since this is a requirement of the sending country, every effort must

be made to fulfill this requirement. I am interested in what options the adoption agencies have in this regard.

I am very eager to hear from each of you about the implementation of the Convention and the IAA as well as the regulatory framework that has been established to promote safe and healthy adoptions worldwide. Thank you for joining us today.